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Security Council

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Letter dated 23 November 2004 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, addressed to the President of the Security Council

I am pleased to transmit herewith the assessments of the President (see annex I) and of the Prosecutor (see annex II) of the International Criminal Tribunal for the Former Yugoslavia, pursuant to paragraph 6 of Security Council resolution 1534 (2004).

I would be grateful if you could transmit these assessments to the members of the Security Council.

(*Signed*) Theodor **Meron**

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Annex I

Assessments and report of Judge Theodor Meron, President of the International Criminal Tribunal for the Former Yugoslavia, provided to the Security Council pursuant to paragraph 6 of Council resolution 1534 (2004)

1. The present report is submitted pursuant to Security Council resolution 1534 (2004), adopted on 26 March 2004 in which the Council, in paragraph 6 of the resolution requested the International Criminal Tribunal for the Former Yugoslavia (ICTY) "to provide to the Council, by 31 May 2004 and every six months thereafter, assessments by its President and Prosecutor, setting out in detail the progress made towards implementation of the completion strategy of the Tribunal, explaining what measures had been taken to implement the completion strategy and what measures remained to be taken, including the transfer of cases involving intermediate and lower rank accused to competent national jurisdictions".

I. Introduction

2. The Security Council created the Tribunal on 25 May 1993 by its resolution 827 (1993), in which it assigned the Tribunal the task of "prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia" since 1991. Working with few modern precedents, the Tribunal has since developed a system for bringing to account those accused who are most responsible for acts of genocide, crimes against humanity and other serious violations of international humanitarian law. In its nine and a half years of existence, the Tribunal has completed trials in 18 cases involving 36 accused. A further 17 accused have pleaded guilty, 3 of whom entered pleas mid-trial. Eight accused are currently being tried in 6 cases before the Trial Chambers. The Tribunal has therefore completed or is holding in the first instance proceedings involving 60 accused in 24 trials and 15 separate guilty plea proceedings.[1] It is expected that one additional trial judgement will be rendered in the next month or two and at least one new trial will begin, which will increase the above numbers to at least 63 accused in a total of 25 trials.

3. The Tribunal has always been mindful that its role is not that of a permanent court, but of an ad hoc entity intended to complete a finite task. In 2002, the President of the Tribunal, Judge Claude Jorda, submitted the Tribunal's annual report, which outlined the Tribunal's strategy for fulfilling its task and winding up its operation. In its resolution 1503 (2003), adopted on 28 August 2003, the Security Council endorsed the Tribunal's completion strategy, which envisioned completion of investigations by the end of 2004, completion of all trial work at first instance by the end of 2008, and completion of all work in 2010, by concentrating on the prosecution and trial of the most senior leaders suspected of being most responsible for crimes within the jurisdiction of the Tribunal. The Council reaffirmed its endorsement of the completion strategy in its resolution 1534 (2004).

4. Since the most recent report of the President of the Tribunal to the Security Council, on 21 May 2004, the Tribunal has continued to improve the efficiency of its proceedings, to concentrate its focus on the most senior leaders suspected of being responsible for the most serious crimes within the Tribunal's jurisdiction, and

to promote the establishment of institutions in the former Yugoslavia that can ensure that other serious violations of international humanitarian law do not go unpunished. The Tribunal has contributed its expertise to training seminars for judges and prosecutors in republics of the former Yugoslavia to enhance the capability of national jurisdictions to try war crimes in fair and credible trials, and continues to support the efforts to establish a war crimes chamber within the State Court of Bosnia and Herzegovina to try accused of lower and intermediate rank who were originally indicted by the Tribunal.

5. The Tribunal's three Trial Chambers continue to operate at full capacity, handling six cases simultaneously. Currently four trials are being heard in the cases of *Krajišnik*, *Milošević*, *Hadžihasanović and Kubura*, and *Orić*. The *Brđanin* Trial Chamber rendered its judgement on 1 September 2004. Two other cases, *Strugar* and *Blagojević* and *Jokić*, are currently in the judgement writing stage, the first due to be rendered before the end of December 2004, the second in January 2005. Through the work of a special trial scheduling working group in which all the branches of the Tribunal participate, the Trial Chambers also continue to prepare for the transition from one case to the next so as to minimize the time between the conclusion of one trial and the start of another. The arrival at The Hague of every freshly indicted accused creates additional stresses in meeting the target for the completion of trials in 2008. It is essential that the Tribunal continue to have adequate personnel to perform its work, a requirement seriously threatened by the current hiring freeze, which not only limits the Tribunal's ability to take on new staff to meet its increasing workload, but also forbids hiring even to replace essential personnel who leave the Tribunal. The Tribunal must also be in a position to improve its retention of qualified staff and to rectify the severe staff shortage at the Appeals Unit of the International Criminal Tribunal for Rwanda (ICTR) at The Hague to address the increase in appeals work originating from ICTR.

II. Measures taken to implement the completion strategy

A. Referral of cases involving intermediate and lower rank accused to competent national jurisdictions

6. One element critical to achievement of the completion strategy will be the ability of the Tribunal to refer cases to competent national jurisdictions for trial. By transferring lower- and intermediate-level defendants, the Tribunal will enhance the critical involvement of national Governments in bringing reconciliation and justice to the region. As the Balkan region moves towards stability, the national courts of Bosnia and Herzegovina, Croatia and Serbia and Montenegro should therefore assume a major role in bringing offenders to justice, achieving reconciliation in the area and promoting the rule of law. National courts can only do so, however, if trials are not used for political purposes and if they meet international standards of due process and fair trial. To that end, other members of the international community have begun lending support to the fledgling Sarajevo tribunal. That facility's availability may depend, however, on the Office of the High Representative obtaining the additional support for the Chamber and for detention facilities that it considers necessary. Although the donor community gave meaningful support to the War Crimes Chamber at the donors' conference held at the Tribunal on 30 October 2003, additional support is still required, as the Security Council recognized in

calling for further financial support in paragraph 10 of resolution 1534 (2004). During my first official visit to Croatia in early November 2004, I was impressed by the professionalism of the Supreme Court and of the County Court in Zagreb. I am optimistic about their growing capability to try war crimes cases according to international human rights and due process standards.

7. Under rule 11 bis of the Tribunal's Rules of Procedure and Evidence, a Trial Chamber may refer a confirmed indictment for prosecution, either *proprio motu* or upon motion by the Prosecutor, to the authorities of a State in which the crime was committed, in which the accused was arrested, or which has jurisdiction and is willing and adequately prepared to accept the case. In determining whether to refer an indictment, the Trial Chamber must consider the gravity of the crimes charged and the level of responsibility of the accused. Trial Chambers may not refer cases to jurisdictions in which the accused might not be accorded a fair trial, or in which the death penalty is a possible consequence of the trial.

8. The Prosecutor has already begun to make motions for the transfer of cases to domestic jurisdictions under rule 11 bis. To date, she has filed six motions involving 10 accused, namely Željko Mejakić, Momčilo Gruban, Dušan Fuštar, Duško Knežević, Rahim Ademi, Mirko Norac, Radovan Stanković, Vladimir Kovačević, Mitar Rašević and Savo Todović, requesting that each be transferred to the courts of Bosnia and Herzegovina. A Trial Chamber has been tasked to review these requests for 11 bis transfer. If the Trial Chamber ultimately deems some or all of the requests to be appropriate, the resulting transfers will be of real assistance in keeping the Tribunal on schedule for compliance with the completion strategy.

9. The special chamber of Bosnia and Herzegovina's State Court will soon be ready to accept transferred cases of lower- and intermediate-level officials. Officials from the Tribunal have worked closely with the Office of the High Representative to create the special chamber. An Implementation Task Force and nine working groups were established, and those groups are nearing completion of their work in preparing the Sarajevo War Crimes Chamber to receive transferred cases. The Bosnian authorities expect that the Chamber will be operational by January 2005, and the Tribunal is prepared to begin transferring appropriate cases as soon as practicable. While cooperation of Bosnia and Herzegovina with the Tribunal remains very good in this and all other areas, there has been no cooperation on the part of Republika Srpska. There has been no serious effort by the Republika Srpska authorities to locate and arrest fugitives, and the issue of missing and possibly hidden documentation (archives of the Republika Srpska President, Supreme Command and General Staff) is still not resolved.

10. Croatia's cooperation with the Tribunal is good in all domains except for the arrest of Ante Gotovina, the sole remaining fugitive from justice. The need to arrest Gotovina and deliver him up to The Hague continues to be an issue of the highest importance, and one that should have been resolved a long time ago. The Tribunal is engaged in a number of initiatives designed to help make the Croatian and Serbian judicial systems suitable for eventual referral of cases from ICTY. For example, the Tribunal organized an extensive programme of six training seminars for Croatian judges and prosecutors who are likely to take part in the trial of war crimes cases. The programme, organized on the initiative of the Minister of Justice of Croatia, consisted of seminars conducted by the Tribunal's officials, held in the late spring and summer of 2004 and repeated in the autumn. The seminars focused on the

jurisprudence of the Tribunal and on international humanitarian law, with the aim of strengthening the familiarity of Croatian judges and prosecutors with those subjects and improving their ability to try serious violations of international humanitarian law. The Tribunal has also hosted a week-long visit, organized by the United Nations Development Programme, by seven judges of the newly established Department for War Crimes at the Belgrade District Court, commonly known as the Special Court for War Crimes. The aim of the visit was to facilitate the transfer of knowledge and experience from the practice of the Tribunal and to establish channels of communication between the Special Court and the Tribunal. Unfortunately, despite some progress on the granting of waivers for witnesses to be authorized to testify and the recent surrender of Ljubiša Beara, ICTY remains gravely concerned over the lack of cooperation of the Serbian Government, in particular its unwillingness to arrest fugitives.

B. Compliance with requirement of seniority in resolution 1534 (2004)

11. In paragraph 5 of resolution 1534 (2004), the Security Council called on the Tribunal, "in reviewing and confirming any new indictments, to ensure that any such indictments concentrate on the most senior leaders suspected of being most responsible for crimes within the jurisdiction" of the Tribunal. The direction to concentrate on the most senior leaders, which originated with recommendations made by the Tribunal, has been in existence since at least 2000, when the Security Council took note of "the position expressed by the International Tribunals that civilian, military and paramilitary leaders should be tried before them in preference to minor actors".[2]

12. Rule 28(A) of the Tribunal's Rules of Procedure and Evidence implements this directive by requiring the Bureau, a body comprised of the President and the Vice-President of the Tribunal and the Presiding Judges of the three Trial Chambers, to confirm that every new indictment submitted by the Prosecutor concentrates on one or more of the most senior leaders suspected of being most responsible for crimes within the jurisdiction of the Tribunal. Up to now, the Bureau has determined under rule 28(A) that recent indictments have all satisfied the seniority criterion.

C. Efforts to make interlocutory appeals more effective

13. In recent years, the Tribunal has sought to make the consideration of interlocutory appeals more effective. Interlocutory appeals serve an important purpose in permitting the resolution of critical issues by the Appeals Chamber before the end of trial. However, such appeals should be the exception, not the rule, as excessive use of the procedure can interrupt the flow of a trial and create a substantial drain on the Appeals Chamber's resources. Since 23 April 2002, rules 72 and 73 of the Tribunal's Rules of Procedure and Evidence have limited interlocutory appeals (except appeals of motions challenging jurisdiction) by requiring a Trial Chamber's certification that an appeal involves "an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings". The same text was added to rules 72 and 73 of the ICTR Rules of Procedure and Evidence on 27 May 2003.

14. The certification rule appears to have somewhat diminished the number of interlocutory appeals coming from ICTY cases. The Appeals Chamber decided 24 interlocutory appeals in 2001, 35 in 2002, and 28 in 2003. In the first 10 months of 2004, 24 interlocutory appeals were decided or remained pending. The number of ICTY interlocutory appeals thus seems to be decreasing. And while the number of certified appeals in ICTR has been rising — the Appeals Chamber decided 7 interlocutory appeals in 2001, 9 in 2002, 16 in 2003, and 28 in the first 10 months of 2004 — the number of interlocutories certified from that Tribunal is still on a rough par with those from ICTY. The judges are now giving consideration to further discouragement of unnecessary interlocutory appeals by additional amendment of the Rules, which, if adopted, would allow the Appeals Chamber to rein in the number of inappropriately certified appeals in the coming years.

III. Continued implementation of the completion strategy

15. The Tribunal continues to search for additional measures to improve its ability to meet the goals of the completion strategy. In order to identify factors bearing on the continued implementation of the completion strategy, a prognosis of the Tribunal's ability to meet the completion strategy under current conditions is necessary.

A. Updated prognosis regarding the completion strategy

1. Recapitulation of May 2004 estimate

16. In May 2004,[3] I reported to the Security Council that the Tribunal estimated it could still complete the trials of those accused who were in custody or on provisional release at that time, as well as the trial of the fugitive Ante Gotovina (provided he is transferred to The Hague before 2006 and tried together with Ivan Čermak and Mladen Markač) before the close of 2008. But I also reported that if new indictees or current fugitives (such as Radovan Karadžić and Ratko Mladić) were to arrive at The Hague and require new and separate trials, it would become increasingly unlikely that all accused within the custody of the Tribunal would be tried by the end of 2008. I informed the Security Council that, if Karadžić and Mladić were to be captured, trial work would likely have to continue at least through the end of 2009.

17. Those predictions could not take account of certain factors outside the control of the Tribunal, such as when fugitives are turned over to the Tribunal and substantial delays in trials due to illness of the accused, nor could it estimate how many cases might not require a major trial at the Tribunal due to a guilty plea (in such cases only sentencing hearings and sentencing judgements are required) or a referral to a domestic jurisdiction under rule 11 bis.

2. Current estimate

18. Since my most recent report to the Security Council, one new indictment has been submitted and confirmed: that of Goran Hadzić. He is accused of, inter alia, perpetrating mass murders and mass deportations in his role as President of the Serbian Autonomous District of Slavonia, Baranja and Western Srem. He remains at

large. Two more additions to the caseload come from the arrests of Ljubiša Beara and Miroslav Bralo, two fugitives who were already under indictment. Beara is accused of playing a leadership role in acts of genocide by the Army of Republika Srpska at the Srebrinica enclave. He made his first appearance at the Tribunal on 12 October 2004. Bralo is accused of perpetrating a series of war crimes including rape, murder and torture while he was a member of the ethnic Croat HVO Jokers in the Lasva Valley region of Bosnia and Herzegovina. Bralo first appeared before the Tribunal on 15 November 2004.

19. Even with these new arrivals, 20 fugitives still remain at large. Their delivery up to The Hague without further delay is of the essence. These new additions to the Tribunal's docket do not require significant revision of the estimate presented to the Security Council in May 2004. At present, the Tribunal still estimates that, with a reasonable rate of granting pending and anticipated 11 bis applications, it could complete the trials of all accused currently in custody, including those on provisional release, as well as the trial of Gotovina (provided he is transferred to The Hague before 2006 and tried together with Čermak and Markač) before the close of 2008. But any further growth in the trial docket (including the capture of Karadžić and Mladić, or the arrest of any of the four Serbian generals indicted in October 2003) would make achievement of the 2008 deadline entirely dependent on the ability to dispose of some pending or future cases other than by a full trial at the Tribunal, e.g. by entry of guilty pleas. Any additional indictments filed by the Prosecutor in the coming months would make these questions more pressing.

20. As before, these predictions themselves rest on certain important assumptions. First, they presume that trials pending in November 2005, notably the *Krajišnik* case, will continue uninterrupted even though the mandate of the Tribunal's permanent judges expires during that month. Second, it is impossible to predict delays related to the health of the accused or counsel or other obstacles to the orderly conduct of trial. If new indictees or current fugitives arrive at The Hague and require new and separate trials, it will become likely that it will take at least until the end of 2009 to complete the trials of all accused within the custody of the Tribunal.

B. Factors bearing on implementation of the completion strategy

21. Three categories of factors bear on the Tribunal's continued implementation of the completion strategy in the future. First, the Tribunal must have adequate personnel in order to meet its steadily increasing workload. The general hiring freeze imposed on the Tribunal presents a clear and present danger to the ability of the Tribunal to meet the goals of the completion strategy. Without adequate assistance from legal officers, the time required for the judges of the Tribunal to hear and decide cases will increase dramatically. The freeze must be lifted, sooner rather than later. Other necessary measures include improving the retention of qualified staff and ensuring adequate staffing of the Appeals Chamber in the light of increased appeal work from ICTR.

22. Secondly, the Tribunal must be able to focus its resources on trying the most senior accused suspected of being most responsible for crimes within the Tribunal's jurisdiction within the time frame of the completion strategy. This requires the development of domestic institutions in the States of the former Yugoslavia capable

of receiving eligible cases referred under rule 11 bis. The schedule would also be positively affected in the event that additional accused plead guilty before trial. Improved cooperation by Member States and appropriate measures to avoid interruptions due to the expiry of the permanent judges' term of office in November 2005 and of ad litem judges in June 2005 will further assist the Tribunal's ability to fulfil the goals of the completion strategy.

23. Thirdly, steps will need to be taken in preparation for the winding up of the Tribunal to ensure that the requirements of the Statute and international law can be met after the Tribunal's work is complete, particularly with regard to requests for pardon, commutation and review.

24. It should also be mentioned, per my letter to the Under-Secretary-General, the Legal Counsel, that it would be helpful for elections of ad litem judges to be held as early as possible in 2005, so as to enable the Tribunal to achieve the most timely and efficient organization of trials possible.

IV. Conclusion

25. The Security Council's decision to create an international tribunal for the prosecution of serious violations of international humanitarian law has yielded a mature institution that is now making daily contributions to the fight against impunity. Despite the vast scope and unprecedented nature of its task, the Tribunal has achieved the Security Council's goal of ensuring that persons responsible for war crimes, genocide and crimes against humanity must answer for them in public trials that meet the highest standards of international due process. The jurisprudence that the Tribunal has developed, in matters of international criminal law and international criminal procedure, has already served as an important resource for ICTR and other war crimes tribunals established under the aegis of the United Nations, and will no doubt provide guidance to the International Criminal Court.

26. The Tribunal is committed to doing all within its power to meet the goals of the completion strategy. In order to fulfil its mandate, however, the Tribunal must be able to try in particular the most senior fugitives accused of serious violations of international humanitarian law, in particular Karadžić and Mladić, as well as Gotovina. As long as those individuals remain at large, the Tribunal will not have completed its historic mission. In order to carry out this task of providing justice to victims and ending impunity, the Tribunal needs the strong political and financial support of the United Nations and all Member States, as well as the necessary resources to do its job. Measures such as a general freeze of hiring personnel are bound to jeopardize the work of the Tribunal and hence the completion strategy.

27. The Security Council's instruction that the Tribunal focus on trying the most senior persons responsible for crimes within its jurisdiction means that new indictees will be unlikely candidates for referral to national jurisdictions under rule 11 bis. It is therefore imperative that cases already on the Tribunal's docket that can be completed without a full trial be finished as soon as possible, and that cases of lower-level and intermediate-level indictees be transferred to national jurisdictions. The success of the Sarajevo War Crimes Chamber is critical in this regard. Furthermore, the transfer of the high-priority fugitives — Karadžić, Mladić and Gotovina — should be ensured as soon as possible, and cooperation by the States of

the former Yugoslavia must be forthcoming in all other relevant situations, including the provision of evidence and the return of individuals on provisional release.

28. As ICTY progresses through the most active and productive period of its history, it continues to send a powerful message of responsibility and accountability to the former Yugoslavia and throughout the international community. With the support of Member States, the Tribunal will be able to continue playing this vital role.

Notes

[1] Goran Jelišić's case is counted among both the completed trials and the guilty pleas, because he pleaded guilty on some counts and was tried on another.

[2] Security Council resolution 1329 (2000), 7th preambular paragraph.

[3] See S/2004/420.

Enclosure I

Persons Convicted or Acquitted after Trial and Guilty Pleas (Total: 52)*				
1. Persons Convicted or Acquitted after Trial (36 persons, 18 cases)				
Case	**Name**	**Former Title**	**Initial Appearance**	**Judgement**
1	Duško Tadić	Police officer & SDS official	26 April 1995	7 May 1997
2	Zejnilf Delalić	Commander, Special Tactical Group	9 May 1996	16 November 1998 (acquitted)
	Zdravko Mucić	Commander, Čelebici Camp	11 April 1996	16 November 1998
	Hazim Delić	Deputy Commander, Čelebici Camp	18 June 1996	
	Esad Landžo	Camp Guard	18 June 1996	
3	Anto Furundžija	Commander Military Police, HVO	19 December 1997	10 December 1998
4	Zlatko Aleksovski	Prison Commander	29 April 1997	25 June 1999
5	Goran Jelišić*	Luka Camp staff	26 January 1998	14 December 1999 (acquitted of genocide but pleaded guilty on other counts; see below)
6	Dragan Papić	Member HVO	8 October 1997	14 January 2000 (acquitted)
	Zoran Kupreškić	HVO Soldier	8 October 1997	14 January 2000
	Mirjan Kupreškić	HVO Soldier	8 October 1997	
	Vlatko Kupreškić	HVO Soldier	16 January 1998	
	Drago Josipović	HVO Soldier	8 October 1997	
	Vladimir Šantić	Military Police Commander	8 October 1997	
7	Tihomir Blaškić	HVO Colonel	3 April 1996	3 March 2000
8	Dragoljub Kunarac	Commander VRS	9 March 1998	22 February 2001
	Radomir Kovač	Sub-Commander, Military Police	4 August 1999	
	Zoran Vuković	Sub-Commander, Military Police	29 December 1999	
9	Dario Kordić	President HDZ-BiH	8 October 1997	26 February 2001
	Mario Čerkez	HVO Commander		
10	Radislav Krstić	Deputy Commander VRS Drina Corps	7 December 1998	2 August 2001
11	Miroslav Kvočka	Commander Omarska Camp	14 April 1998	2 November 2001
	Milojica Kos	Shift Commander	2 June 1998	
	Dragoljub Prcać	Deputy Commander, Omarska	10 March 2000	
	Mladjo Radić	Shift Commander	14 April 1998	
	Zoran Žigić	Detention Camp staff	20 April 1998	
12	Milorad Krnojelac	Commander KP Dom Camp	18 June 1998	15 March 2002
13	Mitar Vasiljević	Para-military	28 January 2000	29 November 2002

14	Mladen Naletilić	KB Commander (para-military)	24 March 2000	31 March 2003
	Vinko Martinović	ATG Commander	12 August 1999	
15	Milomir Stakić	President Municipal Assembly, Prijedor	28 March 2001	31 July 2003
16	Blagoje Simić	President, SDS Bosanski Šamac	15 March 2001	17 October 2003
	Miroslav Tadić	Chairman, Bosanski Šamac "Exchange Commission"	17 February 1998	
	Simo Zarić	Commander	26 February 1998	
17	Stanislav Galić	Commander Sarajevo Romanija Corps	29 December 1999	5 December 2003
18	Radoslav Brđanin	Member of Serbian Democratic Party of BiH	12 July 1999	1 September 2004
	Total Persons: 36			

* Goran Jelišić appears in both sections of this annex because he pled guilty on some counts and was tried on another.
All figures as of 5 November 2004.

2. Persons Pleading Guilty (17 persons)				
Case**	**Name**	**Former Title**	**Initial Appearance**	**Judgement**
1	Dražen Erdemović	Soldier	31 May 1996	29 November 1996
2	Goran Jelišić*	Luka Camp staff	26 January 1998	14 December 1999 (tried and acquitted on another charge)
3	Stevan Todorović	Chief of Police, Bosanski Šamac	30 September 1998	31 July 2001
4	Duško Sikirica	Commander, Keraterm Camp	7 July 2000	13 November 2001 (guilty pleas entered after 6 months of trial)
	Damir Došen	Shift Commander	1 November 1999	
	Dragan Kolundžija	Shift Commander	14 June 1999	
5	Milan Simić	President, Executive Board, Bosanski Šamac	17 February 1998	17 October 2002
6	Biljana Plavšić	Acting President 'Serbian Republic' of BiH	11 January 2001	27 February 2003
7	Predrag Banović	Guard, Keraterm Camp	16 November 2001	28 October 2003
8	Momir Nikolić	Captain VRS	3 April 2002	2 December 2003
9	Dragan Obrenović	Deputy Commander 1st Zvornik Infantry Brigade	18 April 2001	10 December 2003
10	Dragan Nikolić	Commander, Sušica Detention Camp	28 April 2000	18 December 2003
11	Ranko Češić	Luka Camp staff	20 June 2002	11 March 2004
12	Miodrag Jokić	Admiral, VPS	14 November 2001	18 March 2004
13	Miroslav Deronjić	President, Bratunac Crisis Staff	10 July 2002	30 March 2004
14	Darko Mrđa	Special Police Officer	17 June 2002	31 March 2004
15	Milan Babić	President SAO, Krajina	26 November 2003	29 June 2004
	Total Persons: 17			

All figures as of 5 November 2004.

* Goran Jelišić appears in both sections of this annex because he pled guilty on some counts and was tried on another.

** For the purposes of this section of the table, Case refers to Sentencing Proceeding. Upon entry of a guilty plea in a multi-defendant case, the accused is severed from the case for the purposes of sentencing.

Enclosure II

Trials in Progress (8 accused, 6 cases)				
Case	**Name**	**Former Title**	**Initial Appearance**	**Comments**
1	Slobodan Milošević	President of FRY	3 July 2001	"Kosovo, Croatia & Bosnia" Judgment expected 2006
2	Naser Orić	Military and Police commander	15 April 2003	"Srebrenica" Judgement expected October 2005
3	Vidoje Blagojević	Brigade Commander	16 August 2001	"Srebrenica" Judgment expected December 2004
	Dragan Jokić	Chief Engineer	21 August 2001	
4	Enver Hadžihasanović	ABiH Brig. Commander	9 August 2001	"Central Bosnia" Judgment expected June 2005
	Amir Kubura	ABiH Commander	9 August 2001	
5	Pavle Strugar	Commander of Second Operational Group, JNA	25 October 2001	"Dubrovnik" Judgment expected November 2004
6	Momčilo Krajišnik	President of Assembly of Serbian People in BiH	7 April 2000	"Bosnia & Herzegovina" Judgment expected March 2006
	Total Persons: 8			

All figures as of 5 November 2004.
Cases are listed in the order that trials were commenced.

Enclosure III

Accused Awaiting Trial (34 accused, 18 cases)			
Case	**Name**	**Former Title**	**Initial Appearance**
1	Rahim Ademi*	Major-General	26 July 2001
2	Sefer Halilović*	ABiH Military Commander	27 September 2001
3	Pasko Ljubičić	Commander 4th Military Police Batallion HVO	30 September 2001
4	Dušan Fuštar	Shift Commander, Omarska	6 February 2002
	Momčilo Gruban*	Shift Commander, Omarska	10 May 2002
	Dušan Knežević	Detention Camp staff	24 May 2002
	Željko Mejakić	Commander, Omarska Detention Camp	7 July 2003
5	Dragoljub Ojdanić	Chief of Staff, Yugoslav Army	26 April 2002
	Nikola Šainović	Deputy Prime Minister FRY	3 May 2002
	Milan Milutinović	President Serbia	27 January 2003
6	Mile Mrkšić	Colonel and Commanding Officer, JNA	16 May 2002
	Mile Radić	JNA Captain	21 May 2003
	Veselin Šljivančanin	JNA Major	16 February 2004
7	Milan Martić	'President' of Republic of Serbian Krajina (RSK)	21 May 2002
8	Radovan Stanković	Para Military, Foča	21 July 2002
9	Haradin Bala	KLA Member	20 February 2003
	Isak Musliu	KLA Member	20 February 2003
	Fatmir Limaj	KLA Commander	5 March 2003
10	Vojislav Šešelj	President, SRS	26 February 2003
11	Naser Orić	Commander ABiH	15 April 2003
12	Franko Simatović	Commander, DB Special Operations	2 June 2003
	Jovica Stanišić	Head, State Security Service, Republic of Serbia (DB)	12 June 2003
13	Ivica Rajić	Commander Croatian Defence Council HVO	27 June 2003
14	Mitar Rašević	Commander of KP Dom Prison Guards	18 August 2003
15	Vladimir Kovačević	JNA Commander	3 November 2003
16	Ivan Čermak	Assistant Minister Defence, Croatia	12 March 2004
	Mladen Markač	Special Police Commander	
17	Jadranko Prlić *	President HVO	6 April 2004
	Bruno Stojić *	HVO Official	
	Slobodan Praljak *	Assistant Minister Defence, HVO	
	Milivoj Petković *	HVO Commander	
	Valentin Ćorić *	Chief of Military Police Administration, HVO	
	Berislav Pušić *	Military Police Commanding Officer, HVO	
18	Ljubiša Beara	Colonel, Chief of Security, Army of Republika Srpska (VRS)	12 October 2004
	Total Persons: 34		

All figures as of 5 November 2004.

* On provisional release.

Enclosure IV

APPEALS COMPLETED IN 2003* (with date of Filing and Decision)			
ICTY INTERLOCUTORY		FROM JUDGEMENT	
ICTY		**ICTY**	
1. Nikolić — IT-94-2-AR72	07/11/02-	1. Celebici — IT-96-21-A*bis*	10/10/01-
2. Obrenović — IT-02-60-AR65.3	09/01/03		08/04/03
3. Blagojević — IT-02-60-AR65.4	26/11/02-		
(leave granted 16/01/03)	16/01/03	2. Krnojelac — IT-97-25-A	12/04/02-
4. Galić — IT-98-29-AR54	26/11/02-		17/09/03
5. Blagojević — IT-02-60-AR73	17/02/03	**ICTR**	
6. Blagojević — IT-02-60-AR73.2		1. Rutaganda — ICTR-96-3-A	05/01/00-
7. Blagojević — IT-02-60-AR73.3	06/03/03-		26/05/03
8. Šešelj — IT-03-67-AR73	13/03/03	CONTEMPT	
9. Milutinović — IT-99-37-AR72	14/02/03-	**ICTR**	
(leave granted 25/03/03)	08/04/03		
10. Simić — IT-95-9-AR73.6	17/0/203-	**ICTY**	
11. Simić — IT-95-9-AR73.7	08/04/03	1. Milošević — IT-02-54-A-R77.2	03/12/02-
12. Nikolic —IT-94-2-AR73	18/02/03-		25/02/03
13. Milutinović — IT-99-37-AR65.2	08/04/03	REVIEW	
(Ojdanic)	09/04/03-	**ICTY**	
14. Milutinović — IT-99-37-AR65.2	22/04/03	1. Kupreškić — IT-95-16-R.2	30/07/02-
(Sainovic)	28/02/03-		27/06/03
15. Šešelj — IT-03-67-PT	21/05/03		
correspondence1			
16. Milutinović — IT-99-37-AR65.3	05/05/03-		
17. Hadzihasanović — IT-01-47-AR72	26/05/03	ICTR INTERLOCUTORY	
(leave granted 21/02/03)	09/05/03-		
18. Mrkšić — IT-95-13/1-AR73	26/05/03	**ICTR**	
19. Nikolić — IT-94-2-AR73	27/01/03-	1. Ndayambaje — ICTR-96-8-A	29/10/02-
20. Šešelj — IT-03-67-PT	05/06/03	2. Sagahutu — ICTR-00-56-A	10/01/03
correspondence2	05/06/03-	3. Nahimana — ICTR-96-11/52-A	23/12/02-
21. Milosević — IT-02-54-AR73.4	26/06/03		26/03/03
22. Orić — IT-03-68-AR65		4. Rukundo — ICTR-2001-70-I	06/03/03-
(confidential)	05/06/03-	5. Nyiramasuhuko ICTR-97-21-	28/03/03
23. Milosević — IT-02-54-AR73.5	26/06/03	AR15bis	19/03/03-
24. Limaj — IT-03-66-AR65		6. Nthahobali — ICTR-97-21-	28/04/03
25. Limaj — IT-03-66-AR65.2	26/05/03-	AR15bis	21/07/03-
26. Limaj — IT-03-66-AR65.3	27/06/03	7. Kanyabashi – ICTR-96-15-	24/09/03
27. Blagojević — IT-02-60-AR73.4	10/06/03-	AR15bis	21/07/03-
(confidential)	03/07/03	8. Ndayambaje – ICTR-96-8-	24/09/03
28. Milutinović — IT-99-37-AR73.2	27/11/02-	AR15bis	22/07/03-
	16/07/03	9. Nteziryayo – ICTR-97-29-	24/09/03
		AR15bis	22/07/03-
	04/06/03-	1. Rukundo – ICTR-2001-70-	24/09/03
	30/07/03	AR72	22/07/03-

* Statistics for the appeals decided in years prior to 2003 may be found in the previous Completion Strategy report. *See* S/2004/420.

	20/06/03- 06/08/03 27/08/03- 11/09/03 13/05/03- 30/09/03 30/07/03- 17/10/03 01/10/03- 28/10/03 22/09/03- 31/10/03 23/09/03- 31/10/03 23/09/03- 31/10/03 01/08/03- 07/11/03 13/05/03- 13/11/03	2. Rukundo — ICTR-2001-70-AR108 3. Ntabakuze — ICTR-98-41-AR72/73 (confidential) 4. Rukundo — ICTR-2001-70-AR65(d) 5. Karemera — ICTR-98-44-AR73 6. Military Case ICTR-98-41-AR93 7. Military Case, ICTR-98-41-AR93	24/09/03 19/03/03- 17/10/03 17/09/03- 23/10/03 29/09/03- 27/10/03 11/11/03- 18/12/03 29/10/03- 19/12/03 09/10/03- 19/12/03 10/11/03- 19/12/03

Total number of Appeals completed in 2003 = 49

Interlocutory Appeals = 44 Contempt = 1

Appeals from Judgement = 3 Review = 1

Enclosure V

APPEALS COMPLETED AS OF 5 NOVEMBER 2004
(with date of Filing and Decision)

ICTY INTERLOCUTORY

ICTY	
1. Milosević — IT-02-54-AR73.6	22/09/03-20/01/04
2. Šešelj — IT-03-67-AR73.2	12/01/04-03/02/04
3 Brđanin — IT-99-36-AR73.10	10/12/03-19/03/04
4 Orić — IT-03-68-AR73	01/03/04-24/03/04
1. Hadžihasanović — IT-47-AR73.2	29/12/03-02/04/04
2. Odjanic — IT-99-37-AR72.2 (leave granted 27/02/04)	13/05/03-08/06/04
3. Halilović — IT-01-48-AR73	13/04/04-21/06/04
4. Milosević — IT-02-54-AR54bis (leave granted 03/06/04	19/05/04-14/07/04
5. Šešelj — IT-03-67-AR72.1	28/06/04-02/09/04
6. Prlić — IT-74-AR65.1	05/08/04-08/09/04
7. Prlić — IT-74-AR65.3	16/08/04-08/09/04
8. Petković — IT-74-AR65.2	10/08/04-08/09/04
9. Stanisić/Simatović — IT-03-69-AR73	07/09/04-29/09/04
10. Mejakić — IT-02-65-AR73.1	13/07/04-06/10/04
11. Milošević IT-02-54-AR73.7	29/09/04-01/11/04

FROM JUDGEMENT

ICTY	
1. Vasiljevic - IT-98-32-A	30/12/02-25/02/04
2. Krstić - IT-98-33-A	15/08/01-19/04/04
3. Blaškić - IT-95-14-A	17/03/00-29/07/04
ICTR	
1. Niyitegeka ICTR-96-14-A	21/05/03-09/07/04

CONTEMPT

REVIEW

ICTY	
1. Kupreškić - IT-95-16-R3	11/09/03-02/04/04

ICTR INTERLOCUTORY

ICTR	
8. Bizimungu — ICTR-99-50-AR50	03/11/03-12/02/04
9. Simba, ICTR-01-76-AR72	03/02/04-13/02/04
10. Mugiraneza — ICTR-99-50-AR37	05/11/03-27/02/04
11. Rukundo — ICTR-2001-70-AR65(d) (leave granted 18/12/03)	30/12/03-08/03/04
12. Simba, ICTR-01-76-AR72	25/02/04-24/03/04
13. Ngirumpatse — ICTR-98-44-AR73.2	15/03/04-08/04/04
14. Rukundo — ICTR-2001-70-R65(D)	24/03/04-28/04/04
15. Nzirorera — ICTR-98-44-AR73(f)	03/02/04-09/06/04
16. Nzirorera, ICTR-98-44-AR73.4	13/04/04-10/06/04
17. Nzirorera, ICTR-98-44-AR72	13/04/04-11/06/04
18. Karemera, ICTR-98-44-AR73.4	11/05/04-11/06/04
19. Karemera, ICTR-98-44-AR72.2	14/04/04-11/06/04
20. Nzirorera, ICTR-98-44-AR72.3	17/05/04-11/06/04
21. Karemera,ICTR-98-44-AR15bis	31/05/04-21/06/04
22. Bizimungu-ICTR-99-50-AR73.2	01/03/04-25/06/04
23. Mugiraneza — ICTR-99-50-AR73.3	08/04/04-15/07/04
24. Nyiramasuhuko —ICTR-98-42-AR73	25/03/04-05/07/04
25. Ntahobali — ICTR-98-42-AR73	26/03/04-05/07/04
26. Bizimungu — ICTR-99-50-AR73.4	31/03/04-15/07/04
27. Simba, ICTR-01-76-AR72.2	15/04/04-29/07/04
28. Ngirumpatse, ICTR-98-44-AR73.3	26/03/04-27/08/04
29. Nyiramasuhuko ICTR-98-42-AR75	01/09/04-03/09/04
30. Nyiramasuhuko — ICTR-98-42-AR73	12/07/04-27/09/04
31. Simba, ICTR-01-76-AR72.3	22/07/04-30/09/04
32. Karemera, ICTR-98-44-AR15bis.2	22/07/04-28/09/04
33. Nyiramasuhuko — ICTR-98-42-AR73.2	26/07/04-04/10/04
34. Rwamakuba ICTR-98-44-AR72.4	31/05/04-22/10/04

Total number of Appeals completed = 49
Interlocutory Appeals = 44 Contempt = 0
Appeals from Judgement = 4 Review = 1
Total number of decisions issued as of 5 November 2004 = 286

APPEALS PENDING ON 5 NOVEMBER 2004
(with filing date)

INTERLOCUTORY			FROM JUDGEMENT		
ICTY			**ICTY**		
12. Stanišić— IT-69-AR65.1	p.1	29/07/04	1. Kordic — IT-95-14/2-A	p. 5	12/03/01
13. Simatović — IT-69-AR65.2	p.1	29/07/04	2. Kvočka — IT-98-30-A	p. 6	13/11/01
14. Prlic — IT-04-74-AR73.1	p. 2	13/09/04	3. Martinovic/Naletelic IT-98-34-A	p. 8	07/04/03
15. Martic — IT-95-11-AR73.1	p. 2	13/09/04	4. Stakić — IT-97-24-A	p. 12	11/08/03
16. Cermak & Markac — IT-03-73-AR65.1	p. 4	20/09/04	5. Simić — IT-95-9-A	p. 14	17/11/03
17. Mladic — IT-95-5/18-I-AR54bis	p. 4	24/09/04	6. Galić — IT-98-29-A	p. 15	15/12/03
7. Hadžihasanović et al — IT01-47-AR73.3	p.4	02/11/04	7. Momir Nikolić — IT-02-60/1-A	p. 17	30/12/03
ICTR			8. Dragan Nikolić — IT-94-2-A	p. 18	16/01/04
1. Nzabirinda — ICTR-2001-77-I		27/10/04	9. Jokić — IT-01-42/1-A	p. 19	23/03/04
			10. Deronjić— IT-02-61-A	p. 20	14/04/04
			11. Babić — IT-03-72-A	p. 21	16/07/04
			12. Brđanin Case — IT-99-36-A:	p. 22	30/09/04
			ICTR		
			1. Ntakirutimana — ICTR-96-10/17-A	p. 25	21/03/03
			2. Semanza ICTR-97-20-A	p.26	16/06/03
			3. Kajelijeli ICTR-98-44A-A	p.27	08/12/03
			4. Media — ICTR-99-52-A	p.28	12/12/03
			5. Kamuhanda — ICTR-99-54-A	p.29	03/02/04
			6. Cyangugu — ICTR-99-46-A	p.30	04/03/04
			7. Gacumbitsi — ICTR-01-64-A	p.32	16/07/04
			8. Ndindabahizi — CTR-01-71-A	p.33	13/08/04
			CONTEMPT		
			ICTY		
			1.		
			Review		
			ICTY		
			1. Niyi egeka	ICTR-96-14-A	27/10/04

Total number of Appeals pending = 28
Interlocutory Appeals = 8 Contempt = 0
Appeals from Judgement = 20 Review = 1

Annex II

Assessment of Carla Del Ponte, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, provided to the Security Council pursuant to paragraph 6 of Council resolution 1534 (2004)

I. Introduction

1. The present report is submitted pursuant to paragraph 6 of the Security Council resolution 1534 (2004) of 26 March 2004, in which the Council requested the International Criminal Tribunal for the former Yugoslavia "to provide to the Council, by 31 May 2004 and every six months thereafter, assessments by its President and Prosecutor, setting out in detail the progress made towards implementation of the completion strategy of the Tribunal, explaining what measures have been taken to implement the completion strategy and what measures remain to be taken, including the transfer of cases involving intermediate and lower rank accused to competent national jurisdictions".

2. As a follow-up to the first assessment report of 21May 2004[1] and to the presentation to the Security Council on 29 June 2004,[2] the present report provides an updated assessment of the progress made towards implementing the completion strategy of the Tribunal. It outlines the measures already taken and indicates the steps that remain to be taken.

3. The Tribunal's completion strategy is focused on three principal dates, the first of which concerns the conclusion of all new investigations by 31 December 2004. This first major milestone, which entirely relies on the activities and efforts of the Prosecutor and her Office, will be reached as planned. By the end of 2004, the investigation of all remaining targets will be complete and the last new indictments will be presented for confirmation. In this process, all investigations have been streamlined and are focused only on the most senior leaders responsible for the most serious crimes.

4. The Office of the Prosecutor will do its utmost within the framework of its mandate to meet the two remaining target dates, namely the completion of trials by the end of 2008, and of all appeals by the end of 2010.

5. The completion strategy is twofold. First, the International Tribunal must try those bearing the gravest responsibility for the crimes, including the high-profile fugitives, and thus complete its activities in a swift and efficient, yet fair and impartial, manner. Second, the domestic jurisdictions of the territories of the former Yugoslavia must be reformed and equipped to take over the remaining cases. Over the past few months, the Prosecutor's Office has taken initiatives in requesting the transfer of certain cases to the domestic jurisdictions of Bosnia and Herzegovina and of Croatia. Six motions have been filed requesting the deferral of indicted cases pursuant to rule 11 bis of the Rules of Procedure and Evidence, and it is the Prosecutor's intention to file additional requests in other cases in the coming months.

6. Despite all the progress made, it is important to stress that the completion strategy of the Tribunal is affected heavily by factors which are beyond its control,

such as the provision of adequate resources and the lack of cooperation of States, in particular of Serbia and Montenegro, notably in arresting indicted persons.

II. Progress made towards implementation of the completion strategy

A. New indictments and remaining investigations

7. The Prosecutor is continuously reviewing progress in the remaining six investigations. In accordance with Security Council resolutions 1503 (2003) and 1534 (2004), they all concern the most senior leaders. The latest assessment is that each of these investigations may result in an indictment. Therefore, a maximum of six new indictments could be presented to the Chambers for confirmation before the end of 2004. Of these six final indictments, two could be joined with indictments already issued. There would therefore potentially be a maximum of four additional trials resulting from these new indictments.

8. The most recent other indictment confirmed concerns Goran Hadzić, former President of the so-called Republika Srpska Krajina in Croatia, charged with crimes against humanity and violations of the laws or customs of war. The sealed indictment was given to the authorities of Serbia and Montenegro, on whose territory Goran Hadzić was living, on 13 July 2004. The same day, he left his residence and disappeared. There is strong evidence that Mr. Hadzić was informed of the indictment shortly after it was delivered and that this information allowed him to flee.

B. Ongoing trial and appeals activities

9. The Tribunal consistently continues to improve the efficiency of its proceedings so as to operate at full capacity, with the handling of six cases simultaneously. Currently four trials are ongoing in the cases of *Krajišnik, Milošević, Hadžihasanović* and *Kubura*, and *Orić*. Furthermore, a judgement was delivered in *Brđjanin* and others are expected in *Blagojević* and in *Strugar* and *Jokić* by the end of the year. The prosecution also finished presenting its case in *Hadžihasanović et al.*, and the Office of the Prosecutors is trial-ready in six other cases involving 10 accused. One of these, the *Limaj et al.* case, was due to start on 15 November. The Office of the Prosecutor will also continue to support the judges in their effort to streamline the procedure so as to complete all trials by 2008 and all appeals by 2010, including in the framework of the Rules Committee and of the Scheduling Committee.

C. Transfer of cases

10. The Office of the Prosecutor has been particularly active in preparing for the possible transfer of some cases indicted in the past by the International Tribunal for trial by domestic jurisdictions. The Prosecutor's Office has contributed its expertise to training seminars for prosecutors and judges in republics of the former Yugoslavia to enhance the capability of national jurisdictions to try war crimes in

fair and credible trials. The Tribunal continues to support the efforts of the Office of the High Representative to establish a war crimes chamber within the State Court of Bosnia and Herzegovina to try accused of lower and intermediate rank who were originally indicted by the Tribunal. Assurances have been received that the War Crimes Chamber within the State Court should become operational in January 2005.

11. As early as 9 October 2003,[3] the Prosecutor indicated to the Security Council that the appropriate time to start transferring cases to the domestic jurisdictions in accordance with rule 11 bis would be the beginning of 2005. In order to implement that timetable, the Prosecutor's Office has already filed six motions pursuant to rule 11 bis, requesting that cases be referred back to Croatia, Serbia and Montenegro and Bosnia and Herzegovina. Similar motions are planned in the coming months. The Prosecutor estimates that, by the end of the year, she will have requested the transfer to domestic jurisdictions of 11 cases involving 20 accused. Some of them are still at large, and it is important that they be arrested and brought before ICTY soon, to ensure that the transfers occur in the appropriate manner.

12. In addition to those indicted cases to be transferred in accordance with rule 11 bis, the Office of the Prosecutor has also started to forward non-indicted cases, i.e. investigative material, to local prosecutors for their review and for further investigations. It is planned to provide the State Prosecutor of Bosnia and Herzegovina with more than a dozen such non-indicted cases involving about 50 suspects. Extensive materials on a case concerning six accused was handed over to the special war crimes prosecutor in Belgrade. More such material will be sent to Serbia and Montenegro, Croatia and Bosnia and Herzegovina in the months ahead.

13. On a separate note, the prosecutorial review function that the Prosecutor previously carried out pursuant to Part 5 of the Agreed Measures of the Rome Statement of 18 February 1996 was transferred to the State Prosecutor of Bosnia and Herzegovina, effective from 1 October 2004. This review function concerned criminal cases that were sent by local courts in Bosnia and Herzegovina to be assessed in The Hague. Cases involving almost 3,500 suspects have been reviewed since 1997. So far, unfortunately, very few of these cases sent back to local courts were investigated fully and tried. Although it would have been preferable to continue carrying out this task in The Hague until the end of the year, this proved impossible for lack of funding.

14. The war crimes trials to take place in Croatia, in Serbia and Montenegro and in Bosnia and Herzegovina will need robust monitoring. The Office of the Prosecutor is in contact with the Organization for Security and Cooperation in Europe, which is best equipped to carry out this important task.

D. Measures taken to improve the management and efficiency of the Office of the Prosecutor

15. As a consequence of the impending reduction of the investigative activities of the Office of the Prosecutor, it has been decided to reduce progressively the size of the Office. There was confidence that the reduction of the staff level could be reached by natural attrition. The hiring freeze imposed by the United Nations Secretariat in May 2004 resulted in a number of key positions remaining unfilled, putting the completion strategy in peril. Moreover, the budget for the Investigation Division was not approved for 2005, thus causing the departure of a significant

number of the most experienced and talented investigative staff. The Secretariat eventually allowed the Prosecutor's Office to extend one-year contracts into 2005 for a significant number of the remaining staff; this step has helped retain some who would otherwise have departed. However, the ban on any new recruitment imposed upon ICTY by the Secretariat has seriously affected the Office of the Prosecutor, at a time when other United Nations bodies, such as the Volcker Commission which is investigating the oil-for-food programme, has aggressively recruited some of the best investigators with very generous offers. Over the past year, well over 40 per cent of the senior investigators and almost 50 per cent of the senior legal staff left the Office of the Prosecutor. Due to the hiring freeze, they can be replaced only through internal promotion, and that of course creates additional problems, as it is becoming increasingly difficult to continue to promote internally to senior levels without compromising professional standards. This situation is already impeding the work of the Office and could soon impact on the efficiency of the trials.

16. It should be emphasized once more that the end of investigations does not mean the end of all investigative activities. Indeed, the term "investigation" is defined in rule 2 of the Tribunal's Rules of Procedure and Evidence as meaning:

> "All activities undertaken by the Prosecutor under the Statute and the Rules for collection of information and evidence, *whether before or after an indictment is confirmed*" (emphasis added).

17. It is therefore important to appreciate that skilled investigators and the other staff in the Investigation Division, such as the criminal, political and military analysts, remain essential for the prosecution process, including both in the pre-trial and in the trial phases, as well as during the appeal stage.

18. A new Deputy Prosecutor and Chief of Prosecutions took up their duties over the summer and the Office is being restructured to adjust to the challenges of the completion strategy. The management of the Office of the Prosecutor has been actively engaged in strategic planning for the future and has designed a new set of strategic aims and objectives, centred on the concept of the "positive completion" of the Tribunal's mandate. Those aims are now being incorporated into work plans and individual performance at all levels. Their purpose is to set the direction for the remaining years to provide clarity to staff and to foster a dynamic atmosphere in the Office towards achieving the goals established in the completion strategy.

III. External factors impacting on the implementation of the completion strategy

19. The main factor hampering the implementation of the completion strategy has been and remains the lack of cooperation of States, in particular Serbia and Montenegro, in the arrest and transfer of persons indicted by the Tribunal.

A. Cooperation of States

20. There are currently 20 fugitives awaiting apprehension on arrests warrants issued by this Tribunal. Clearly this is one of the most important factors affecting the Tribunal's ability to meet the completion strategy deadlines. Beyond the surrender of accused, there are other areas where the cooperation that ICTY receives

from the States of the former Yugoslavia affects the completion strategy. Speedy trials require the prompt production of documentary evidence and unhampered access and availability of witnesses. Under Article 29 of the ICTY Statute, it is a legal obligation of all States Members of the United Nations to cooperate with the Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law. The Prosecutor's Office needs to be able to access without undue delay the relevant documents, witnesses and other forms of evidence held by the relevant States in order to complete its investigations and prepare the trials.

21. During the reporting period, one fugitive, Ljubiša Beara, who was indicted on 26 March 2002 for his role in the Srebrenica genocide, was surrendered to The Hague by the Serbian authorities on 10 October 2004. On 8 October 2004, precise information was transmitted to the Prime Minister of Serbia on the whereabouts of Beara, thus forcing the Serbian Government to act. The police forces surrounded that location on 9 October, and he did not resist his arrest. On 12 October, he appeared for the first time before the Court, and he called upon all fugitives to surrender.

22. Among the fugitives are very senior leaders responsible for the most serious crimes under the jurisdiction of ICTY, including Karadžić, Mladić and Gotovina, but also Djordjević, Lukić, Lazarević, Pavković, indicted for crimes committed in Kosovo, Zupljanin, a former senior official of Republika Srpska, and Borovčanin, Nikolić, Pandurević and Popović, all four co-accused of Ljubiša Beara for the Srebrenica genocide. In accordance with Security Council resolutions 1503 (2003) and 1534 (2004), the mandate of the Tribunal cannot be considered as fulfilled so long as these accused are not tried in The Hague.

23. The responsibility for the arrest of these fugitives lies primarily with the Governments of Serbia and Montenegro, Croatia and Bosnia and Herzegovina. The international community has been active through the Stabilization Force (SFOR) in Bosnia and Herzegovina, and through the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Kosovo Force (KFOR) in Kosovo to try to locate and detain fugitives. Some fugitives may also be in other countries. Information concerning two accused who allegedly are in the Russian Federation was transmitted to the Russian authorities, who informed the Prosecutor's Office that, to date, they have not been able to locate them. I am grateful to the Russian authorities for the cooperation extended so far on this issue and for their willingness to further act upon this and other related information. It is important to stress that arrest warrants delivered by ICTY are valid everywhere, and that all States are obliged to arrest and transfer the fugitives who are on their territory.

24. In Croatia, the Prosecutor's Office continues to benefit from an unrestricted access to documents and witnesses. However, cooperation cannot be considered as full until Ante Gotovina is in The Hague. As previously reported to the Security Council, General Gotovina's disappearance shortly after the sealed indictment was issued, in June 2001, was due to the Croatian authorities' poor handling of the situation. In fact, the then Government did nothing to prevent his escape. This spring, the new Government took resolute steps to locate the fugitive. Despite the expectation that the matter would soon be resolved, the efforts of the Government slowed down during the summer. Today, neither results nor significant progress can be reported. This is a cause of serious concern, for the non-arrest of Gotovina could

influence the possibility for the arrest of Karadžic and Mladić, all these of whom are mentioned in Security Council resolutions 1503 (2003) and 1534 (2004). The Office of the High Representative has taken energetic measures against the networks protecting the fugitives in Bosnia and Herzegovina, particularly in Republika Srpska. It is hoped that those measures, which include significant structural and personnel changes at both the federal and the entity level, will finally lead to the prompt arrest of fugitives. If such is not the case, upon the request of the High Representative, additional measures that could be taken will be suggested. Still, Republika Srpska has not arrested one single person indicted by the Tribunal.

25. Serbia and Montenegro remains the country which is the most reluctant to cooperate with the Tribunal. Networks protecting those indicted for war crimes remain very powerful, including in the state structures. They are also effective in manipulating public opinion through aggressive smear campaigns targeting ICTY and its Prosecutor. Part of the political establishment, however, understands the necessity to cooperate fully with the Tribunal. This was reflected at the State Union level by the positive approach taken by the President of the National Council for Cooperation, Minister Rasim Ljajić. As a result, one of the most pressing issues, access to witnesses, was resolved this fall in an efficient and professional manner. On the other hand, the Prosecutor cannot at this stage ascertain any willingness of the Serbian Republican authorities to comply with the country's international legal obligations. It is estimated that approximately 15 fugitives reside or spend most of their time in Serbia and Montenegro. Some do not even need to hide, like Generals Lukić, Pavković and Lazarević. The failure to arrest Goran Hadžić, on 13 July 2004, was most probably attributable to a leak from within the state Administration. Despite its obligation under rule 59 of the ICTY Rules of Procedure and Evidence, the Government has not provided any report on this failure, nor has it, it seems, properly investigated the matter. Prime Minister Kostunica made it clear to the Prosecutor during their meeting on 4 October that he was not willing to proceed to any arrest. This position was repeated both publicly and in private by the Minister of Justice on more than one occasion. Serbia thereby challenges the authority of the Security Council, which has in several instances called upon Serbia and Montenegro to render all necessary assistance to ICTY, particularly to bring the fugitives to the Tribunal. It is up to the Council to decide how it will address what appears to be a serious breach by a Member State of its international obligations under Chapter VII of the Charter of the United Nations.

26. Experience shows that, unfortunately, it is only under international pressure that the States of the former Yugoslavia cooperate with ICTY.

B. Further efforts to build domestic courts

27. One of the key components of the completion strategy is the referral of lower- and intermediate-level accused to domestic courts. In each of the countries concerned, significant steps were taken to build up domestic courts that will be able to try war crimes cases in accordance with the highest standards of fair trial and due process. However, on most issues, further progress is still required. Most importantly, witness protection needs to be enhanced and regional cooperation at the technical level must be strongly encouraged. Another concern that was voiced in several instances is the risk of interference by political bodies in the work of the

courts. To help prevent and remedy this danger, an intrusive international monitoring is required.

28. The local courts are still confronted with the lack of willingness of witnesses to testify in the region, when the same witnesses would have been ready to testify in The Hague. Witness intimidation is a serious problem throughout the region. However, in Kosovo, it is widespread, systematic and potentially deadly. On 21 October 2004, an indictment was issued for contempt of court against a Kosovo Albanian, Beqe Beqaj, on charges of interfering with witnesses in the case *Limaj et al*. Thanks to the excellent cooperation of UNMIK and KFOR, Beqaj was transferred to The Hague on 4 November.

29. A serious problem in this context is the general political climate throughout the region, which is fostered by some media outlets which are obviously serving the interests of alleged war criminals. These are often presented as national heroes, while neither the victims nor the crimes receive much attention, when the latter are not simply denied. In such a negative atmosphere, witnesses, in particular insider witnesses, refuse to testify for fear of reprisals.

30. The prosecution of cases referred to domestic courts will require strong cooperation between the countries of the former Yugoslavia. First, it is most likely that prosecutors from one country will have to have access to witnesses, documents and other evidence from other countries. Secondly, individuals accused in one country may reside in another country of the region or may have dual citizenship. In the absence of adequate judicial assistance and extradition agreements and mechanisms functioning between the countries of the former Yugoslavia, there is a high risk that cases being transferred by the Prosecutor's Office to the region will not be pursued. Such impunity must not be allowed to stand.

31. In this context, the State Prosecutor of Croatia has played a crucial role by proposing in September 2004 an agreement between the prosecutors of the region that would facilitate direct communication and exchanges between them. This initiative, which is strongly supported by the Office of the Prosecutor, deserves the firm political support of the international community.

32. Although the most sensitive cases will be dealt with by specially designated and equipped courts, there are also lower-level cases that will have to be tried before other courts, for instance at the district or cantonal level. Whether all such courts are capable of facing this challenge is still a question, and training programmes and general support for these courts should be encouraged, especially in terms of fairness and impartiality of the legal process.

IV. Conclusion

33. As demonstrated by the present report, the implementation of the completion strategy is on course. The first deadline of this strategy will be met with all the new investigations completed by the end of the year. Additionally, the Office of the Prosecutor will continue to work closely with the other organs of the Tribunal to meet the objectives set in resolutions 1503 (2003) and 1534 (2004).

34. By the end of the year, 11 motions requesting the transfer of cases to be tried by local jurisdictions pursuant to rule 11 bis of the Rules of Procedure and Evidence will have been filed. The Prosecutor will continue working in developing judicial

capacity throughout the former Yugoslavia so as to finalize the groundwork for the transfer of cases.

35. The Tribunal, however, does not operate in a vacuum, and the successful implementation of the completion strategy will depend on further increasing the efficiency of the Tribunal, and also on the willingness of the States to fully cooperate with it. Specifically, the Tribunal needs the freeze on new recruitment to be lifted as soon as possible. It also needs the States of the former Yugoslavia to arrest and transfer all remaining 20 fugitives without delay.

Notes

[1] S/2004/420, enclosure II.

[2] See S/PV.4999 and Resumption.

[3] See S/PV.4838.